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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,952	12/05/2001	Peter Kalisch	400004-2018	8674

7590 03/28/2005
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EXAMINER

CHIN, PAUL T

ART UNIT	PAPER NUMBER
3652	

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,952

Applicant(s)

KALISCH ET AL.

Examiner

PAUL T. CHIN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 September 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's amendment filed December 6, 2004, and the arguments presented therewith have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, applicant's arguments with respect to claims 9-15 have been considered but are moot in view of the new ground(s) of rejection. A non-final office action follows below.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "the pouches are picked up and raised with a gripper mechanism" (claim 9) and the "main extension plane inclined to the vertical by an angle of less than 60°" (claim 13) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 9-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant recites a phrase, "pouches are picked up and raised with a gripper mechanism" in claim 9, line 5, by adding a new method of picking up. Applicant states on page 2, lines 3-6:

The gripper elements are movable between the upper longitudinal sides of adjacent pouches. The gripper elements are moved in the longitudinal direction of the upper longitudinal sides from the bottom side and pass the later between adjacent longitudinal sides.

Moreover, applicant also states on page 4, lines 6-7:

According to the invention, the gripper mechanism 20 is moved in the direction of the arrow 26 in a linear manner to the pouches to.

It is pointed out that applicant does not describes that the gripping elements are meant to "raise" the "gripper mechanism".

Further, applicant describes on page 3, paragraph 8:

The gripper elements 22 (or in each case one pair) are movable in a direction of arrows 28 and may be operated by compressed air.

It is not clearly understood how "the gripper elements 22" are movable by compressed air in a horizontal movement as shown in figure 4.

Applicant also states on page 3, paragraph 8 :

This is shown in Figure 5 where extensible pistons 30 move in the direction of arrows 32.

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It is pointed out that it is unclear how "the piston 30" are "extensible" in the direction of arrow 32.

It is unclear as to how the "pistons" are originally positioned in relation to the gripper element 22, what cause the "piston" to extend.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 9-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant recites that "the pouches are picked up and raised with a gripper mechanism" in claim 9, line 5, and also recites "the gripper elements are moved in a parallel path" in claim 9, line 7, which is contrary to the previously recited claim. The gripper mechanism can not be both "raising" and "moving in a horizontal path" the pouches at the same time. It also appears that the recited phrases "adjacent upper longitudinal sides of adjacent pouches" (claim 9, lines 7-8) and "the gripper elements are moved in a longitudinal direction of the upper longitudinal sides, from the bottom side" (claim 9, lines 8-9) are vague and indefinite. The phrase "the bottom side" is unclear as to whether the "bottom side" refers to "the bottom side of the pouches" or the "bottom side of the gripper". Further, there is no antecedent basis for "all of the lateral edges" (claim 13), "the vertical" (claim 13), or "the particular longitudinal side" (Claim 15). Applicant recites that "the main extension plane is inclined to the vertical by an angle of less than 60 degree" in claim 13, but recites "the main extension plane is substantially vertical" in claim 14, which is contrary to the previously recited claim 13. The exact meaning of the phrase "*the particular longitudinal side has a horizontal orientation*" (claim 15) is not clearly understood since the "particular longitudinal side" is not clearly defined.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 9, and 11-15, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Snyder (3,954,165) (see Paper 12).

Snyder (3,954,165) discloses an apparatus and a method for gripping rectangular pouches, comprising picking up the pouches (22,22) with a gripper mechanism having finger-like gripper (72,74) (see Fig. 5) arranged in a substantially comb-like manner wherein the gripper elements are moved by an extensible piston member (80,82) (See Figs. 3 and 5) in a parallel path.

Re claim 15, Snyder (3,954,165) further shows that each pouch (22) has a particular longitudinal side that stands.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 10, best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder (3,954,165).

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Snyder (3,954,165), as presented above, does not show at least five pouches to be gripped simultaneously. However, it would have been obvious design choice to provide more than two grippers (72,74) on the Snyder's device in order to grip more pouches.

Response to Arguments

11. Applicant's arguments with respect to claims 9-15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PAUL T. CHIN

Application/Control Number: 09/937,952

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A handwritten signature in black ink, appearing to read "Paul Ch". The signature is fluid and cursive, with a small mark at the end.

Examiner
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